

1 TRINETTE G. KENT (State Bar No. 222020)
2 3219 E Camelback Road, #588
3 Phoenix, AZ 85018
4 Telephone: (480) 247-9644
5 Facsimile: (480) 717-4781
6 E-mail: tkent@lemborglaw.com

7 Of Counsel to
8 Lemberg Law, LLC
9 43 Danbury Road
10 Wilton, CT 06897
11 Telephone: (203) 653-2250
12 Facsimile: (203) 653-3424

13 Attorneys for Plaintiff,
14 Shauna Hutchins

15 UNITED STATES DISTRICT COURT
16 NORTHERN DISTRICT OF CALIFORNIA

17 Shauna Hutchins,

18 Plaintiff,

19 vs.

20 Wells Fargo Bank, N.A.,

21 Defendant.

Case No.:

**COMPLAINT FOR DAMAGES FOR
VIOLATIONS OF:**

**THE TELEPHONE CONSUMER
PROTECTION ACT**

JURY TRIAL DEMANDED

1 Plaintiff, Shauna Hutchins (hereafter “Plaintiff”), by undersigned counsel,
2 brings the following complaint against Wells Fargo Bank, N.A. (hereafter
3 “Defendant”) and alleges as follows:
4

5 **JURISDICTION**

6 1. This action arises out of Defendant’s repeated violations of the
7 Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“TCPA”).
8

9 2. Jurisdiction of this Court arises under 47 U.S.C. § 227(b)(3) and 28
10 U.S.C. § 1331.
11

12 3. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b), where
13 the acts and transactions giving rise to Plaintiff’s action occurred in this district and/or
14 where Defendant transacts business in this district.
15

16 **PARTIES**

17 4. Plaintiff is an adult individual residing in Salt Lake City, Utah, and is a
18 “person” as defined by 47 U.S.C. § 153(39).
19

20 5. Defendant is a business entity located in San Francisco, California, and is
21 a “person” as the term is defined by 47 U.S.C. § 153(39).
22

23 **ALLEGATIONS APPLICABLE TO ALL COUNTS**

24 6. At all times mentioned herein where Defendant communicated with any
25 person via telephone, such communication was done via Defendant’s agent,
26 representative or employee.
27
28

7. At all times mentioned herein, Plaintiff utilized a cellular telephone service and was assigned the following telephone number: 801-xxx-9053 (hereafter “Number”).

8. Defendant placed calls to Plaintiff's Number in an attempt to collect a debt.

9. The aforementioned calls were placed using an automatic telephone dialing system (“ATDS”) and/or by using an artificial or prerecorded voice (“Robocalls”).

10. When Plaintiff answered calls from Defendant, she heard silence and had to wait on the line to be connected to the next available representative.

11. On or around May 24, 2017, Plaintiff spoke with a live representative and requested that all calls to her cease.

12. In response, Defendant advised Plaintiff that the calls would cease.

13. Nevertheless, Defendant continued to place automated calls to Plaintiff at an excessive and harassing rate.

COUNT I

VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT, 47
U.S.C. § 227, et seq.

14. Plaintiff incorporates by reference all of the above paragraphs of this complaint as though fully stated herein.

1 15. The TCPA prohibits Defendant from using, other than for emergency
2 purposes, an ATDS and/or Robocalls when calling Plaintiff's Number absent
3 Plaintiff's prior express consent to do so. *See* 47 U.S.C. § 227(b)(1).

5 16. Defendant's telephone system has the earmark of using an ATDS and/or
6 using Robocalls in that Plaintiff, upon answering calls from Defendant, heard silence
7 and had to wait on the line to be connected to the next available representative.

9 17. Defendant called Plaintiff's Number using an ATDS and/or Robocalls
10 without Plaintiff's consent in that Defendant either never had Plaintiff's prior express
11 consent to do so, or such consent was effectively revoked when Plaintiff requested
12 that Defendant cease all further calls.

14 18. Defendant continued to willfully call Plaintiff's Number using an ATDS
15 and/or Robocalls knowing that it lacked the requisite consent to do so in violation of
16 the TCPA.

18 19. Plaintiff was harmed and suffered damages as a result of Defendant's
19 actions.

21 20. The TCPA creates a private right of action against persons who violate
22 the Act. *See* 47 U.S.C. § 227(b)(3).

24 21. As a result of each call made in violation of the TCPA, Plaintiff is
25 entitled to an award of \$500.00 in statutory damages.

27 22. As a result of each call made knowingly and/or willingly in violation of
28 the TCPA, Plaintiff may be entitled to an award of treble damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant for:

- A. Statutory damages of \$500.00 for each call determined to be in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3);
- B. Treble damages for each violation determined to be willful and/or knowing under the TCPA pursuant to 47 U.S.C. § 227(b)(3);
- C. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

DATED: January 23, 2018

TRINETTE G. KENT

By: /s/ Trinette G. Kent
Trinette G. Kent, Esq.
Lemberg Law, LLC
Attorney for Plaintiff, Shauna Hutchins